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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,828	12/13/2000	Charles Ritz	321802-1020	8665

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EXAMINER

GREEN, CHRISTY MARIE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/736,828

Applicant(s)

RITZ, CHARLES

Examiner

Christy M Green

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,7-12,15-17 and 20-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38-46 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7-12,15-17,20-31 and 33-37 is/are rejected.
- 7) ☒ Claim(s) 32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/24/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is a second office action for serial number 09/736828 after an RCE was filed 10/23/03, entitled System and Method for Increasing the Load Capacity and Stability of Guyed Towers, filed on December 13, 2000.

Response to Amendment

In response to the examiner's office action dated October 30, 2003, the applicant has cancelled claims 3,5-6,13-14 and 18-19, amended claim 38 and added new claims 41-46.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 7-12, 15-17, 20-30 and 33-37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Moore ('402) in view of Pennell et al. ('566).

Moore teaches a foundation (15,37), a pole tower ("29" - or means for absorbing bending moments) fixedly attached to the foundation, a self-supported tower (13) fixedly attached to the foundation, the pole tower extends through the self-supported tower, the pole tower is attached to the self-supporting tower at a midpoint and interface of the self-supporting tower sections (seen in Figures I a and I b), therefore the tower would also be engaging the pole tower if it were to sway, there is communication equipment (55) attached to the pole tower, the pole tower is sectional and hollow, the self-

supporting tower is comprised of at least two sections, and the communication equipment is mounted at a point above the top end of the self-supported tower. The pole tower is considered to provide substantial support to the outer tower since it is attached to the tower at midpoint of the tower section.

Moore teaches a self-supported tower, not a guyed tower surrounding the pole tower. However, guyed towers and self-supported towers are both conventional towers and are well known in the art to support antennas, as taught by Pennell (column 5, lines 27-35). Pennell indicates that self-supporting towers or guyed towers could be utilized in his invention, therefore it can be reasoned that guyed towers and self-supporting towers are considered functional equivalents in the art, in that they both exist as known towers that can support various structural elements. Accordingly, it would be obvious to one having ordinary skill in the art at the time the invention was made to use a guyed tower with Moore's pole tower. A guyed tower may be desirable if one wants to design a tower with less material, as compared to a self-supporting tower.

It does not state that the pole tower and guyed tower are separated by about one quarter inch. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to separate the towers by a quarter inch, since discovering the optimum value of a result effective variable involves only routine skill in the art. If the outer dimension of the tower decreases in size along the towers height (as seen in Figure 1B of Moore), the section of the pole tower could be close to the tower. Moore does not teach the method for supporting equipment or increasing a load capacity. However, since all of the structural elements have been disclosed or

discussed above, the steps of erecting, attaching, lowering, securing, and inserting would be considered obvious method steps to one having ordinary skill in the art at the time the invention was made. These steps are performed commonly in the construction of building elements.

Claim 31 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Moore ('402) in view of Pennell et al. ('566), and further in view of DiRico et al. ('783).

Moore in view of Pennell discloses a system as stated above, but do not show a tower that tapers at the bottom. DiRico shows that a tower, either self-supporting or with guy wires (column 3, lines 52-53), used to hold communication equipment can have a tapered bottom (Figure 1). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the choice to select the design of a tower that has a tapered bottom section. This type of bottom section may be most appropriate for tall towers.

Allowable Subject Matter

Claims 38-46 are now allowed.

Claim 32 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 3/12/04 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness in the claims is based upon impermissible hindsight reconstruction of applicants invention, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the applicants argument that merely alleging that the modified structure is a "functional equivalent" of the structure described by a prior art reference is insufficient, the examiner recognizes the argument, however, the examiner did not only just merely state that the modified structure is a "functional equivalent", within the rejection above it is also stated that since Pennell indicates that the self-supporting tower or guyed tower could be utilized within the invention, both towers exist and are known to support various structural elements, and, a guyed tower may be desirable if one wants to design a tower with less material, as compared to a self-supporting tower.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for the rejection is found in the knowledge generally available to one of ordinary skill in the art.

In response to applicant's argument that there is nothing in Moore, or any of the other cited art references, to indicate desirability of placing a "pole tower" within a "guyed tower" for the purpose of supporting the "guyed tower", the examiner recognizes the argument, however, it is noted that the features upon which applicant relies (i.e., placing a "pole tower" within a "guyed tower" *for the purpose of supporting the "guyed tower"*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to the applicants argument that the design of guyed towers and self-supported towers are substantially different, the argument is recognized by the examiner, however, it had been held that the test for obviousness is not whether the features of one reference may be different from the other, or incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ch
Cg

May 24, 2004



Carl D. Friedman
Supervisory Patent Examiner
Group 3600